



**Billing Code: 3510-22**

**DEPARTMENT OF COMMERCE**

**[Docket No. 170606544-7544-01]**

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of Commerce, Office of the Secretary.

**ACTION:** Notice of a New System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended; the Freedom of Information Act, as amended; and Office of Management and Budget (OMB) Circular A-108, “Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,” the Department of Commerce (Department) is issuing this notice of its intent to establish a new system of records entitled “COMMERCE/DEPT-29, Unmanned Aircraft Systems.” The use of Unmanned Aircraft Systems (UAS) significantly expands the Department’s ability to collect data critical to its mission. Additionally, as compared to manned aircraft, UAS may provide lower-cost operation and augment existing capabilities while reducing risks to human life. The Department is committed to ensuring that collection, use, retention, or dissemination of information about individuals through the use of any technology, including UAS, complies with the Constitution, and Federal law, regulations, and policies. We invite public comment on the new system announced in this publication.

**DATES:** To be considered, written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. This new system of records will become effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless the modified system of records notice needs to be changed as a result of public comment.

Newly proposed routine uses 12, 13, 14, 15, 16, and 17 in the paragraph entitled “ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES” will become effective on [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless the new system of records notice needs to be changed as a result of public comment.

If the modified system of records notice needs to be changed, the Department will publish a subsequent notice in the *FEDERAL REGISTER* by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], stating that the current system of records will remain in effect until a revised notice is published in the *FEDERAL REGISTER*.

**ADDRESSES:** Please address comments to: NOAA Bureau Chief Privacy Officer, 1315 East-West Highway, Silver Spring, MD 20910, SSMC3, Room 9719.

**FOR FURTHER INFORMATION CONTACT:** Commanding Officer, NOAA Aircraft Operations Center (AOC), 3450 Flightline Drive, Lakeland, FL 33811. Requester should provide name and association with the Department, if any, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

**SUPPLEMENTARY INFORMATION:** UAS are used by the Department of Commerce for a variety of purposes, including research, disaster relief efforts and other rescue efforts, storm tracking, and coastal mapping. The Congress recognized the potential wide-ranging benefits of UAS operations within the United States in the FAA Modernization and Reform Act of 2012 (Public Law 112-95), which requires a plan to safely integrate civil UAS into the National Airspace System (NAS) by September 30, 2015. The Department is creating a new system of records for UAS, entitled “COMMERCE/DEPT-29, Unmanned Aircraft Systems,” as part of its commitment to ensuring that collection, use, retention, or dissemination of information about

individuals through the use of any technology, including UAS, complies with the Constitution, and Federal law, regulations, and policies.

The Privacy Act requires each agency that proposes to establish or significantly modify a system of records to provide adequate advance notice of any such proposal to the Office of Management and Budget (OMB), the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate (5 U.S.C 552a(r)). The purpose of providing the advance notice to OMB and Congress is to permit an evaluation of the potential effect of the proposal on the privacy and other rights of individuals. The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Deputy Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on July 3, 2017.

**SYSTEM NAME AND NUMBER:** Unmanned Aircraft Systems, COMMERCE/DEPT-29.

**SECURITY CLASSIFICATION:** None.

**SYSTEM LOCATION:** National Oceanic and Atmospheric Administration, SSMC3, Silver Spring, MD 20919.

**SYSTEM MANAGER:** Commanding Officer, NOAA Aircraft Operations Center (AOC), 7917 Hangar Loop Drive, Hangar 5, MacDill Air Force Base, FL 33621-5401.

**AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:** Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems (Feb. 15, 2015); National Marine Sanctuaries Act, 16 U.S.C. 1431 et seq; Marine Debris Act , 33 U.S.C. 1951 et seq.; Coast and

Geodetic Survey Act, 33 U.S.C. 883a et seq; Coastal Zone Management Act, 16 U.S.C. 1451 et seq; Coral Reef Conservation Act, 16 U.S.C. 6401 et seq; National Historic Preservation Act, 16 U.S.C. 470 et seq; Ocean Pollution Act, 33 U.S.C. 2701 et seq; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq; Clean Water Act, 33 U.S.C. 1251; 47 CFR parts 80, 87, and 95. The system is also authorized by the U.S. Office of Management & Budget (OMB) Circular A-130; the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. (Magnuson-Stevens Act); High Seas Fishing Compliance Act of 1995, 16 U.S.C. 5501 et seq; International Fisheries Regulations: Vessels of the United States Fishing in Colombian Treaty Waters: 50 CFR 300.120; the FAA Modernization and Reform Act of 2012 (Public Law 112-95); the American Fisheries Act, Title II, Public Law No. 105–277; the Atlantic Coastal Fisheries Cooperative Management Act of 1993, 16 U.S.C. 5101–5108, as amended 1996; the Tuna Conventions Act of 1950, 16 U.S.C. 951–961; the Atlantic Tunas Convention Authorization Act, 16 U.S.C. Chapter 16A; the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773 et seq. (Halibut Act), the Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431–2444; the Marine Mammal Protection Act, 16 U.S.C. 1361; and the Debt Collection Improvement Act, 31 U.S.C. 7701.

**PURPOSE(S) OF THE SYSTEM:** UAS may be used by the Department of Commerce for a variety of purposes, including research, disaster relief efforts and other rescue efforts, storm tracking, law enforcement, and coastal mapping.

The Congress recognized the potential wide-ranging benefits of UAS operations within the United States in the FAA Modernization and Reform Act of 2012 (Public Law 112-95), which requires a plan to safely integrate civil UAS into the National Airspace System (NAS) by

September 30, 2015. As compared to manned aircraft, UAS may provide lower-cost operation and augment existing capabilities while reducing risks to human life.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

a. Current and former employees of the Department of Commerce and such other persons whose association with the Department relates to the use of UAS. The names of individuals and the files in their names may be: (1) received pursuant to employment; or (2) submitted by the employee for access or use to files within the system in the conduct of assigned duties involving UAS.

b. Individuals, including members of the public, who are identified while conducting UAS operations, including those identified during disaster relief efforts, storm tracking, coastal mapping, SARSAT rescue and law enforcement activities. Members of the public could also include fishing vessel owner and occupants.

**CATEGORIES OF RECORDS IN THE SYSTEM:** Access report logs, geospatial reference logs, use history reports, transmission reports, video and photographic imagery, audio files, input commands and control histories, or other similar records that catalogue the use, data collected, and transmission of UAS.

**RECORD SOURCE CATEGORIES:** User input and login, identifiable video imagery, and global positioning satellite geospatial location coordinates.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

1. In the event that a system or records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or the necessity to protect an

interest of the Department, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal, state, local, or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

5. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

6. A record in this system of records which contains medical information may be disclosed, as a routine use, to the medical advisor of any individual submitting a request for access to the record under the Act and 15 CFR part 4b if, in the sole judgment of the Department, disclosure could have an adverse effect upon the individual, under the provision of 5 U.S.C. 552a(f)(3) and implementing regulations at 15 CFR part 4b.6.

7. A record in this system of records may be disclosed, as a routine use, to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record in this system of records may be disclosed, as a routine use, to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

9. A record in this system of records may be disclosed, as a routine use, to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

10. A record in this system may be transferred, as a routine use, to the Office of Personnel Management: for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

11. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services Administration (GSA), or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such

disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e. GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

12. Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 7701).

13. Routine use for research, coastal mapping, and weather system tracking may include disclosure to other Federal Agencies, scholarly research educational facilities, disaster relief organizations, and research partners.

14. Routine use for disaster relief efforts may include disclosure to other federal agencies, local law enforcement, and relief organizations. Routine use for SARSAT PII data may include other Federal Agencies and rescue personnel participating in rescue efforts.

15. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records, (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

16. A record in this system of records may be disclosed to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals,



the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

17. A record in this system of records may be disclosed to student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for the Department and/or its agencies, as authorized by law, as needed to perform their assigned Agency functions.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** Automated storage media, image transmissions, and geospatial tracking media.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** Indices are alphabetical, cross referenced to file number, and by geospatial tracking location. Records may be retrieved by geospatial coordinates of latitude and longitude, or address, which may correspond to residential locations following storm damage assessment or other operations over populated areas. Records may also be retrieved by case name, case number, investigation number, or subject in the case of law enforcement records. Lastly, records may be retrieved by the associated operation, office, file name, storm, or event for which the UAS was used.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:** Each type of record is governed by its applicable Records Control Schedule. If PII is inadvertently captured in any system not covered by this System of Records Notice, it is deleted within 180 days pursuant to Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems (Feb. 15, 2015).

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Used only by authorized screened personnel with a need to know, stored on an encrypted storage device, transmission through encrypted methodologies in satisfaction of the Department's Policy on Electronic Transmission of PII Policy.

**RECORD ACCESS PROCEDURES:** Requests from individuals should be addressed to FOI/P, OPM; ATTN: FOIA Officer; 1900 E Street NW, Room 5415; Washington, DC 20415-7900. Individuals may also request notification of existence of records on himself or herself by sending a signed, written inquiry to the Deputy Chief FOIA Officer and Department Privacy Act Officer, Room 52010, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

For more information, visit:

[http://www.osec.doc.gov/opog/PrivacyAct/PrivacyAct\\_requests.html](http://www.osec.doc.gov/opog/PrivacyAct/PrivacyAct_requests.html).

**CONTESTING RECORD PROCEDURES:** An individual requesting corrections of or amendments to information contained in his or her records must send a signed, written request inquiry to the same address as stated in the Notification Procedure section below. Requesters should reasonably identify the records, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. The Department's rules for accessing, for requesting correction or amendment of contents, and for appealing initial determination by the individual concerned appear in 15 CFR Part 4 Subpart B.

**NOTIFICATION PROCEDURES:** Individuals wishing to determine whether this system of records contains information about them may do so by writing to the above address. Individuals should provide name and association with the Department, if any, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR part 4.23.

## **EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

Pursuant to 5 U.S.C. 552a(j)(2), all information about an individual in the record which meets the criteria stated in the Act: 5 U.S.C. 552a(j)(2) are exempted from the notice, access and contest requirements of the agency regulations and from all parts of 5 U.S.C. 552a except subsections (b), (c) (1) and (2), (e)(4)(A) through (F), (e) (6), (7), (9), (10), and (11), and (i), and pursuant to 5 U.S.C. 552a(k)(2), on condition that if the 5 U.S.C. 552a(j)(2) exemption is held to be invalid, all investigatory material in the record which meet the criteria stated in 5 U.S.C. 552a(k)(2) are exempted from the notice access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f)) of the agency regulations because of the necessity to exempt this information and material in order to accomplish this law enforcement function of the agency, to prevent subjects of investigation from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel. In addition, pursuant to 5 U.S.C. 552a(k)(1), all materials qualifying for this exemption are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) in order to prevent disclosure of classified information as required by Executive Order 12065 in the interest of the national defense and foreign policy.

To the extent that the exemption under 5 U.S.C. 552a(j)(2) is held to be invalid, then the exemptions under 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5) are claimed for all material which meets the criteria of these three subsections.

Provisions of the Privacy Act of 1974 from which exemptions are claimed under 5

U.S.C. 552a(k)(1), (k)(2) and (k)(5) are as follows: 5 U.S.C. 552a(c)(3); 5 U.S.C. 552a(d);

5 U.S.C. 552a(e)(1); 5 U.S.C. 552a(e)(4) (G), (H), and (I); 5 U.S.C. 552a(f).

Reasons for exemptions: In general, the exemption of this information and material is necessary in order to accomplish the law enforcement function of National Marine Fisheries (NMFS)

Office of Law Enforcement (OLE), to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill

commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel. Detailed

reasons follow: Reasons for exemptions under 5 U.S.C. 552a(j)(2) and (k)(2);

(1) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies.

This accounting must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the alerting or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a (c)(4), (d), (e)(4) (G) and (H), (f) and (g) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the contest of information contained in such records; and the civil remedies available to the

individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in records systems. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or to grant access to an investigative file, could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity or confidential sources, reveal confidential information supplied by these sources and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear or reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to identify, detect, and apprehend violators.

(4) 5 U.S.C. 552a(e)(I) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of a criminal or other investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation NMFS/OLE may obtain information concerning the violations of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, NMFS/OLE should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which is related to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privilege under Federal programs. The application of the provision would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct of the following reasons:

a. In certain instances the subject of an investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct, etc., must be obtained from other sources.

b. Most information collected about an individual under investigation is obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his activities. Information may also be obtained through lawful surveillance methods, including UAS.

c. The subject of an investigation will be alerted to the existence of an investigation if any attempt is made to obtain information from subject. This could afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

d. In any investigation, it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(6) 5 U.S.C. 552a(e)(3) requires that an agency must inform the subject of an investigation who is asked to supply information of:

a. The authority under which the information is sought and whether disclosure of the information is mandatory or voluntary,

b. The purposes for which the information is intended to be used,

c. The routine uses which may be made of the information, and

d. The effects on the subject, if any, of not providing the requested information. The reasons for exempting this system of records from the foregoing provision are as follows:

(i) The disclosure to the subject of the investigation as stated in (b) above would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(ii) If the subject were informed of the information required by this provision, it could seriously interfere with undercover activities requiring disclosure of undercover agents' identity and impairing their safety, as well as impairing the successful conclusion of the investigation.

(iii) Individuals may be contacted during preliminary information-gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(7) 5 U.S.C. 552a(e)(5) requires that records be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about an individual. Since the law defines "maintain" to include the collection of information complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation it is not possible to determine this prior to collection of the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material which may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(8) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record of such individual is made available to any persons; under compulsory legal process when such process becomes a matter of public record. The notice requirements of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

Reasons for exemptions under 5 U.S.C. 552a(k)(1):

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the record at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation, and that such persons are subjects of that investigation, information which if known might cause damage to national security.



(2) 5 U.S.C. 552a(d), (e)(4) (G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records, and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigations undertaken in connection with national security; or could disclose the identity of sources kept secret to protect national security or reveal confidential information supplied by these sources.

(3) 5 U.S.C. 552a(e)(3)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose the identity of sources kept secret to protect national security.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of an investigation involving national security matters.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the NMFS/OLE may obtain information concerning the violators of laws other than those within the scope of his jurisdiction. In the interests of effective law enforcement, NMFS/OLE should retain this information as it may aid in establishing patterns of criminal

activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining forms of evidence during an investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

Reasons for exemptions under 5 U.S.C. 552a(k)(5):

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subject with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; co-defendants

of a right to a fair trial; constitute an unwarranted invasion of personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by these sources; and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to make fair and objective decisions on questions of suitability for Federal employment and related issues.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

- a. Because it is not possible to detect relevance or necessity of specific information in the early stages of an investigation.
- b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after that information is evaluated that the relevance and necessity of such information can be established.
- c. In any investigation NMFS/OLE may obtain information concerning the violations of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, NMFS/OLE should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator, by means of UAS data, which relate to matters incidental to the main purpose of the investigation but which may relate to matters under investigative jurisdiction of another agency. Such information cannot readily be segregated.

**HISTORY:** This is a new system of records.

Dated: February 6, 2018.

Michael J. Toland,  
Department of Commerce,  
Deputy Chief FOIA Officer,  
Department Privacy Act Officer.  
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